Office-Supreme Court, U.S.
FILED
AUG 16 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 447

FRANCIS ROBILLARD, LEROY SNOWDEN and JOHN WRENN,

Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE TERM OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

MORTON P. COHEN
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010
WA 9-6076
Counsel for Petitioners

Of Counsel:

SHIRLEY FINGERHOOD
1270 Avenue of the Americas
New York, New York 10020

HENRY M. DI SUVERO
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
PRESENTATION OF CONSTITUTIONAL QUESTIONS	5
REASONS FOR GRANTIGN WRIT	6
No Evidence of Breach of the Peace	6
The Police Activity Constituted Entrapment	9
CONCLUSION	12

TABLE OF AUTHORITIES

Cases:

Banks v. United States, 249 F. 2d 672 (9th Cir. 1957), 258 F. 2d 318, *cert. denied*, 358 U. S. 886 (1958)	9
Garner v. Louisiana, 368 U. S. 157 (1961)	8
Guarro v. United States, 237 F. 2d 578 (D. C. Cir. 1957)	10
People v. Chesnick, 302 N. Y. 58, 96 N. E. 2d 87 (1950)	6
People v. Feliciano, 10 Misc. 2d 836, 173 N. Y. S. 2d 123 (1958)	7

PAGE

People v. McCarthy, 250 N. Y. 358, 165 N. E. 810 (1929) 2
People v. Mills, 178 N. Y. 274, 70 N. E. 786 (1904) 9
People v. Pleasant, 23 Misc. 2d 367, 122 N. Y. S. 2d 141 (1953) 7

Sherman v. United States, 356 U. S. 369 (1950) 9, 10
Sorrells v. United States, 287 U. S. 435 (1932) 9, 10

Thompson v. Louisville, 326 U. S. 199 (1960) 5, 8

United States *ex rel.* Hall v. Illinois, 329 F. 2d 354 (7th Cir. 1964) 9
28 U. S. C. 1257(3) 2

Statutes:

New York Penal Law §722(8) 3
U. S. Constitution, Fourteenth Amendment 3, 4, 6, 11

Miscellaneous:

Jacobs, *Decoy Enforcement of Homosexual Laws*, 112 U. Pa. L. Rev. 259 (1963) 7
Note, The Serpent Beguiled Me and I Did Eat. The Constitutional Status of the Entrapment Defense, 74 Yale L. J. 942 (1965) 9
The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County 13 U. C. L. A. L. Rev. 643 (1966) 8, 11

IN THE

Supreme Court of the United States

October Term, 1966

No. .....

FRANCIS ROBILLARD, LEROY SNOWDEN and JOHN WRENN,
Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE TERM OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Opinions Below

No opinions were delivered in the Courts below. The order of the Supreme Court of the State of New York, Appellate Term, First Department, affirming the convictions of petitioners was decided without opinion.

Jurisdiction

Petitioners seek review of a judgment made and entered by the Supreme Court of the State of New York, Appellate Term, First Department, May 5, 1966. Said judgment affirmed a judgment after trial of conviction against petitioners in the Criminal Court of the City of New York, Part IE, County of New York, on July 29, 1965.

Application for leave to appeal to the Court of Appeals of the State of New York was denied by Judge Stanley H. Fuld of that Court on May 18, 1966. No further resort being available (*People* v. *McCarthy,* 250 N. Y. 358, 361-2), the judgment of May 5, 1966 of the Supreme Court of the State of New York, Appellate Term, First Department, is the decision of the highest court of the state in which a decision could be had.

This Court has jurisdiction herein under 28 U. S. C. 1257(3).

Questions Presented for Review

(1) Whether a conviction for disorderly conduct under a New York statute may stand as a matter of due process of law under the Fourteenth Amendment in the absence of any evidence concerning a disturbance to public tranquillity.

(2) Whether as a matter of due process of law under the Fourteenth Amendment police officers may dress and behave as homosexuals in order to entice others to solicit said police officers for a lewd purpose.

Statutes Involved

§722(8) of the Penal Law of the State of New York (McKinney's Consolidated Laws of New York Annotated, Vol. 39, Part I) provides in pertinent part:

> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "(8) frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or other lewdness."

The Fourteenth Amendment to the Constitution of the United States provides in part:

> "nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Petitioners were tried under §722(8) of the New York Penal Law for having solicited a police officer for immoral purposes. After having entered a plea of not guilty, petitioners were tried and convicted. The only evidence presented by the People was that of the arresting officer, who testified that he entered a bar in the City of New York, ordered a bottle of beer and sat down on a bench. He was then approached by petitioner Robillard who requested a light for a cigarette, which the arresting officer gave him